

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re DEEP VEIN THROMBOSIS
LITIGATION

MDL Docket No 04-1606 VRW

ORDER

This Document Relates To:

04-4896

Plaintiffs Olive and James Menditto move for leave to amend their complaint pursuant to FRCP 15(a). Doc #6.

After a responsive pleading has been filed, "leave to amend should be granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay." Martinez v Newport Beach City, 125 F3d 777, 785 (9th Cir 1997).

Defendant British Airways, Ltd, opposes on the ground that the Mendittos are attempting to "plead around" British Airways' pending motion for summary judgment. See Doc #294 (04-1606). After reviewing the Mendittos' original complaint, however, it is clear they have already asserted legal theories beyond the scope of the pending summary judgment motion. Accordingly, the

1 court fails to see how British Airways would be prejudiced by
2 allowing plaintiffs leave to amend. Regardless whether leave to
3 amend is granted or denied, the Mendittos' claims will not be fully
4 adjudicated even if British Airways' pending summary judgment
5 motion is granted. And given that all other aspects of this
6 litigation have been stayed pending the motions for summary
7 judgment, the court also fails to see how allowing amendment would
8 create delay.

9 No doubt the Mendittos' motion could have been more
10 timely, but in the absence of any real prejudice or risk of delay,
11 the Mendittos' motion for leave to amend is GRANTED provided that
12 the Mendittos' first amended complaint shall be identical to that
13 which they proposed. See Doc #7, Ex A.

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15 SO ORDERED.

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18 VAUGHN R WALKER

19 United States District Chief Judge
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